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DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 319

[Docket No. APHIS-2012-0038]

RIN 0579-AD79

Importation of Cape Gooseberry From Colombia Into the United States

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending the fruits and vegetables regulations to allow the importation of cape gooseberry from Colombia into the United States. As a condition of entry, cape gooseberry from Colombia must be subject to a systems approach that includes requirements for establishment of pest-free places of production and the labeling of boxes prior to shipping. The cape gooseberry also must be imported in commercial consignments and accompanied by a phytosanitary certificate issued by the national plant protection organization of Colombia certifying that the fruit has been produced in accordance with the systems approach. This action allows for the importation of cape gooseberry from Colombia into the United States while continuing to provide protection against the introduction of plant pests.

EFFECTIVE DATE: [Insert date 30 days after date of publication in the Federal Register].

FOR FURTHER INFORMATION CONTACT: Ms. Claudia Ferguson, Senior Regulatory Policy Specialist, Regulatory Coordination and Compliance, PPQ, APHIS, 4700 River Road Unit 133, Riverdale, MD 20737-1236; (301) 851-2352.

SUPPLEMENTARY INFORMATION:

Background

The regulations in “Subpart–Fruits and Vegetables” (7 CFR 319.56-1 through 319.56-66, referred to below as the regulations) prohibit or restrict the importation of fruits and vegetables into the United States from certain parts of the world to prevent the introduction and dissemination of plant pests.

Prior to the effective date of this final rule, the regulations only allowed cape gooseberry (*Physalis peruviana*) to be imported into the United States from Colombia if the commodity was treated with cold treatment for Mediterranean fruit fly (*Ceratitidis capitata* or Medfly).

However, the national plant protection organization (NPPO) of Colombia requested that the Animal and Plant Health Inspection Service (APHIS) amend the regulations to allow commercial consignments of cape gooseberry from production sites recognized as free of Medfly in the Bogota Savannah and the neighboring municipalities above 2,200 meters of elevation in the Departments of Boyacá and Cundinamarca without cold treatment.

In response to the request of the NPPO of Colombia, we prepared a commodity import evaluation document (CIED) titled “Recognition of cape gooseberry production sites that are free of Mediterranean fruit fly within a low prevalence area in Colombia Bogota Savannah and the neighboring municipalities above 2,200 meters in the Departments of Boyacá and Cundinamarca.”

Based on the evidence presented in the CIED, on August 16, 2013, we published in the Federal Register (78 FR 49972-49975, Docket No. APHIS-2012-0038) a proposed rule¹ to authorize the importation of cape gooseberry from Colombia into the United States without cold

¹ To view the proposed rule, supporting documents, or the comments that we received, go to <http://www.regulations.gov/#!docketDetail;D=APHIS-2012-0038>.

treatment, provided that the cape gooseberry were produced in accordance with a systems approach consisting of the following requirements: Production in pest-free areas of production in the Bogota Savannah or the neighboring municipalities above 2,200 meters of elevation in the Departments of Boyacá and Cundinamarca; importation in commercial consignments only; labeling of boxes; phytosanitary inspection; and issuance of a phytosanitary certificate.

We solicited comments concerning our proposal for 60 days ending October 15, 2013. We received two comments by that date. One, from a U.S. importer of cape gooseberry from Colombia, expressed support for the proposed rule. The other, from the NPPO of Colombia, requested several modifications to what it understood to be the provisions of the proposed rule. We discuss this latter comment below.

Comments Regarding Pest-free Areas of Production

As we mentioned above, in order for cape gooseberry to be imported into the United States from Colombia without cold treatment for Medfly, we proposed that the cape gooseberry would have to be produced in areas of Colombia that have been determined to be free from Medfly. In order to demonstrate such freedom, we proposed that the NPPO of Colombia would have to enter into a bilateral workplan with APHIS, and trap for Medfly according to the trapping requirements in that bilateral workplan.

This proposed trapping requirement to demonstrate freedom from Medfly was recommended by the CIED that accompanied the proposed rule. The CIED also provided recommendations regarding the placement and servicing of Medfly traps to implement this proposed requirement. Among other recommendations, it suggested that Jackson traps, a type of Medfly trap, be placed at intervals of 1 trap per hectare.

The NPPO of Colombia requested that this interval be 1 trap per 2 hectares or fraction thereof. The NPPO provided information demonstrating that most cape gooseberry production sites in Colombia are a hectare or less, but that a significant minority of sites are slightly more than a hectare. The NPPO stated that requiring two traps in these latter production sites would be excessive in light of other surveillance activities for Medfly that it already routinely conducts.

The CIED also recommended the use of McPhail or multilure Medfly traps and suggested that such traps be serviced every 7 days. The NPPO stated that it currently services McPhail traps at 14-day intervals, and requested that we allow such servicing intervals to continue if the proposed rule were finalized. The NPPO pointed out the International Atomic Energy Agency recommends servicing McPhail traps once every 7 to 14 days.

As we noted in the preamble to the proposed rule, the provisions of the proposed rule were based on the recommendations of the CIED. The CIED recommended trapping to demonstrate freedom from Medfly within cape gooseberry production areas in Colombia, and the proposed rule incorporated this recommendation as a proposed provision.

The CIED also recommended one method of implementing this proposed trapping requirement. Out of recognition that there could be other methods of implementing the requirement, we did not propose to codify that method. Rather, we proposed to discuss the requirement within the context of developing a bilateral workplan with the NPPO of Colombia. Following the effective date of this final rule, we will engage the NPPO in such a discussion, and develop trapping procedures that are mutually agreed upon to demonstrate freedom from Medfly within a particular cape gooseberry production area.

Comments Regarding Post-Detection Measures

In the proposed rule, we proposed that, if Medfly were captured in a pest-free area of Colombia, this would result in immediate cancellation of exports from cape gooseberry farms within 5 square kilometers of the detection site.

The NPPO of Colombia pointed out that there has only been one detection of Medfly in the proposed pest-free area since 1993. The NPPO also stated that it is the general consensus of entomologists that cape gooseberry is not a preferred host for Medfly. For these reasons, the NPPO suggested that a 5 square kilometer prohibition on exports following a single Medfly detection was not commensurate with risk. Instead, they suggested a 0.5 square kilometer prohibition following such a detection.

The generally accepted standard for eradication areas for Medfly is 5 square kilometers. In order for us to deviate from that standard to the extent requested by the NPPO, there would have to be evidence suggesting that cape gooseberry is so atypical and inhospitable a host of Medfly that a 0.5 square kilometer eradication area surrounding an outbreak would be sufficient to detect all Medfly in the area surrounding the detection and preclude the further spread of the pest. Detection rates of Medfly at non-commercial cape gooseberry sites within the United States suggest that, while cape gooseberry is not a preferred host of Medfly, Medfly populations can establish on cape gooseberry. Thus we are making no change in response to this comment.

In the proposed rule, we proposed that the prohibition on exports of cape gooseberry to the United States following a Medfly detection would continue until APHIS and the NPPO of Colombia agree that the risk has been mitigated. The CIED that accompanied the proposed rule suggested that the duration of this prohibition should be no less than three Medfly life cycles based on degree-day models.

The NPPO of Colombia stated that they do not have field studies regarding degree-day models for Medfly, and suggested that any degree-day models used to fulfill this regulatory requirement be based on peer-reviewed laboratory studies instead.

As we stated in the proposed rule, the prohibition would remain in effect until APHIS and the NPPO of Colombia agree that the risk has been mitigated. Degree-day models regarding the life cycles of Medfly will factor into such a determination, but will not be the sole determinant. To that end, peer-reviewed laboratory studies regarding degree-day models for Medfly will be taken into consideration.

Miscellaneous

In the proposed rule, we proposed to add the conditions governing the importation of cape gooseberry from Colombia as § 319.56-60. In this final rule, they are added as § 319.56-67.

Therefore, for the reasons given in the proposed rule and in this document, we are adopting the proposed rule as a final rule, with the change discussed in this document.

Executive Order 12866 and Regulatory Flexibility Act

This final rule has been determined to be not significant for the purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget.

In accordance with the Regulatory Flexibility Act, we have analyzed the potential economic effects of this action on small entities. The analysis is summarized below. Copies of the full analysis are available by contacting the person listed under FOR FURTHER INFORMATION CONTACT or on the Regulations.gov Web site (see ADDRESSES above for instructions for accessing Regulations.gov).

APHIS is amending the current regulations to allow the entry of fresh cape gooseberry from Colombia under a systems approach. Since 2003, Colombia has been allowed to export

fresh cape gooseberry to the United States under a cold treatment protocol to prevent the entry of Medfly. The systems approach permits cape gooseberry imports without cold treatment from production sites recognized as free of Medfly. In 2011, only about 0.2 percent (14 metric tons) of Colombia's fresh cape gooseberry exports were shipped to the United States, valued at about \$90,300.

The United States does not produce cape gooseberry commercially. Small entities that may benefit from increased imports of fresh cape gooseberry from Colombia will be importers, wholesalers, and other merchants who sell this fruit. While these industries are primarily comprised of small entities, APHIS expects any impacts of the rule for these businesses to be minor.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Executive Order 12988

This final rule allows cape gooseberry to be imported into the United States from Colombia. State and local laws and regulations regarding cape gooseberry imported under this rule will be preempted while the fruit is in foreign commerce. Fresh fruits are generally imported for immediate distribution and sale to the consuming public and would remain in foreign commerce until sold to the ultimate consumer. The question of when foreign commerce ceases in other cases must be addressed on a case-by-case basis. No retroactive effect will be given to this rule, and this rule will not require administrative proceedings before parties may file suit in court challenging this rule.

Paperwork Reduction Act

In accordance with section 3507(d) of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.), the information collection or recordkeeping requirements included in this final rule, which were filed under 0579-0411, have been submitted for approval to the Office of Management and Budget (OMB). When OMB notifies us of its decision, if approval is denied, we will publish a document in the Federal Register providing notice of what action we plan to take.

E-Government Act Compliance

The Animal and Plant Health Inspection Service is committed to compliance with the E-Government Act to promote the use of the Internet and other information technologies, to provide increased opportunities for citizen access to Government information and services, and for other purposes. For information pertinent to E-Government Act compliance related to this rule, please contact Mrs. Celeste Sickles, APHIS' Information Collection Coordinator, at (301) 851-2908.

List of Subjects in 7 CFR Part 319

Coffee, Cotton, Fruits, Imports, Logs, Nursery stock, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Rice, Vegetables.

Accordingly, we are amending 7 CFR part 319 as follows:

PART 319—FOREIGN QUARANTINE NOTICES

1. The authority citation for part 319 continues to read as follows:

Authority: 7 U.S.C. 450, 7701-7772, and 7781-7786; 21 U.S.C. 136 and 136a; 7 CFR 2.22, 2.80, and 371.3.

2. Section 319.56-67 is added to read as follows:

§ 319.56-67 Cape gooseberry from Colombia.

Cape gooseberry (Physalis peruviana) may be imported into the United States from Colombia in accordance with the conditions described in this section. These conditions are designed to prevent the introduction of Ceratitis capitata.

(a) Workplan. The national plant protection organization (NPPO) of Colombia must provide a bilateral workplan to APHIS that details the activities that the NPPO will, subject to APHIS' approval, carry out to meet the requirements of this section. APHIS will be directly involved with the NPPO in the monitoring and auditing implementation of the systems approach.

(b) Places of production. (1) All places of production must be registered with the NPPO of Colombia.

(2) All places of production must be located within the C. capitata low prevalence area of the Bogota Savannah and the neighboring municipalities above 2,200 meters in the Departments of Boyacá and Cundinamarca.

(c) Mitigation measures for C. capitata. (1) Trapping for C. capitata must be conducted in the places of production in accordance with the bilateral workplan to demonstrate that those places are free of C. capitata. Specific trapping requirements must be included in the bilateral workplan. The NPPO of Colombia must keep records of fruit fly detections for each trap and make the records available to APHIS upon request.

(2) All fruit flies trapped must be reported to APHIS immediately. Capture of C. capitata will result in immediate cancellation of exports from farms within 5 square kilometers of the detection site. An additional 50 traps must be placed in the 5 square kilometer area surrounding the detection site. If a second detection is made within the detection areas within 30 days of a previous capture, eradication using a bait spray agreed upon by APHIS and the NPPO of

Colombia must be initiated in the detection area. Treatment must continue for at least 2 months. Exports may resume from the detection area when APHIS and the NPPO of Colombia agree the risk has been mitigated.

(d) Post-harvest procedures. The cape gooseberry must be packed in boxes marked with the identity of the originating farm. The boxes must be packed in sealed and closed containers before being shipped.

(e) Phytosanitary inspection. After packing, the NPPO of Colombia must visually inspect a biometric sample of cape gooseberry at a rate jointly approved by APHIS and the NPPO of Colombia, and cut open the sampled fruit to detect C. capitata.

(f) Commercial consignments. The cape gooseberry must be imported in commercial consignments only.

(g) Phytosanitary certificate. Each consignment of cape gooseberry must be accompanied by a phytosanitary certificate issued by the NPPO of Colombia containing an additional declaration stating that the fruit originated from a place of production free of C. capitata within the low prevalence area of Bogota Savannah and the neighboring municipalities above 2,200 meters of elevation in the Departments of Boyacá and Cundinamarca and was produced in accordance with the requirements of § 319.56-67.

(Approved by the Office of Management and Budget under control number 0579-0411)

Done in Washington, DC, this 28th day of April 2014.

Kevin Shea,

Administrator, Animal and Plant Health Inspection Service.

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